



U.S. Department of Health and Human Services
Office of Inspector General



Using Internal Controls and Compliance in Managing Tribal TANF

Tribal TANF and NEW National Summit

September 16, 2019



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AGENDA

Introduction to the OIG

James Ortmann, Associate Counsel
Office of Counsel to the Inspector General, OIG, HHS

Internal Controls

Maritza Hawrey, Grants and Internal Activities Audit Division
Office of Audit Services, OIG, HHS

Grant Fraud

Reducing Risk and Enhancing Efficiency with a Compliance Program

Andrea Treese Berlin, Senior Counsel
Office of Counsel to the Inspector General, OIG, HHS



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Who We Are

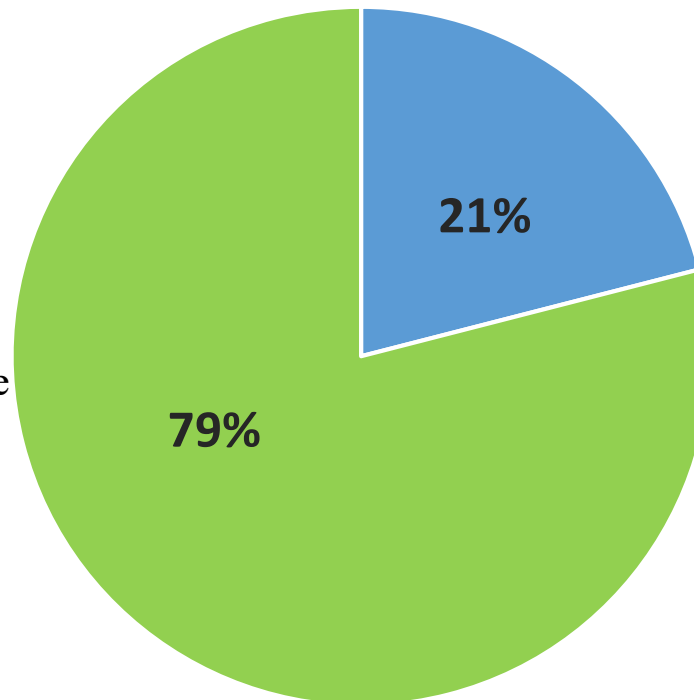




OIG Areas of Oversight

Medicare and Medicaid Oversight Areas Include:

- Medicare Part A
- Medicare Part B
- Medicare Part C
- Medicare Part D
- Medicaid
- Children's Health Insurance Program (CHIP)



PHHS Oversight Areas Include:

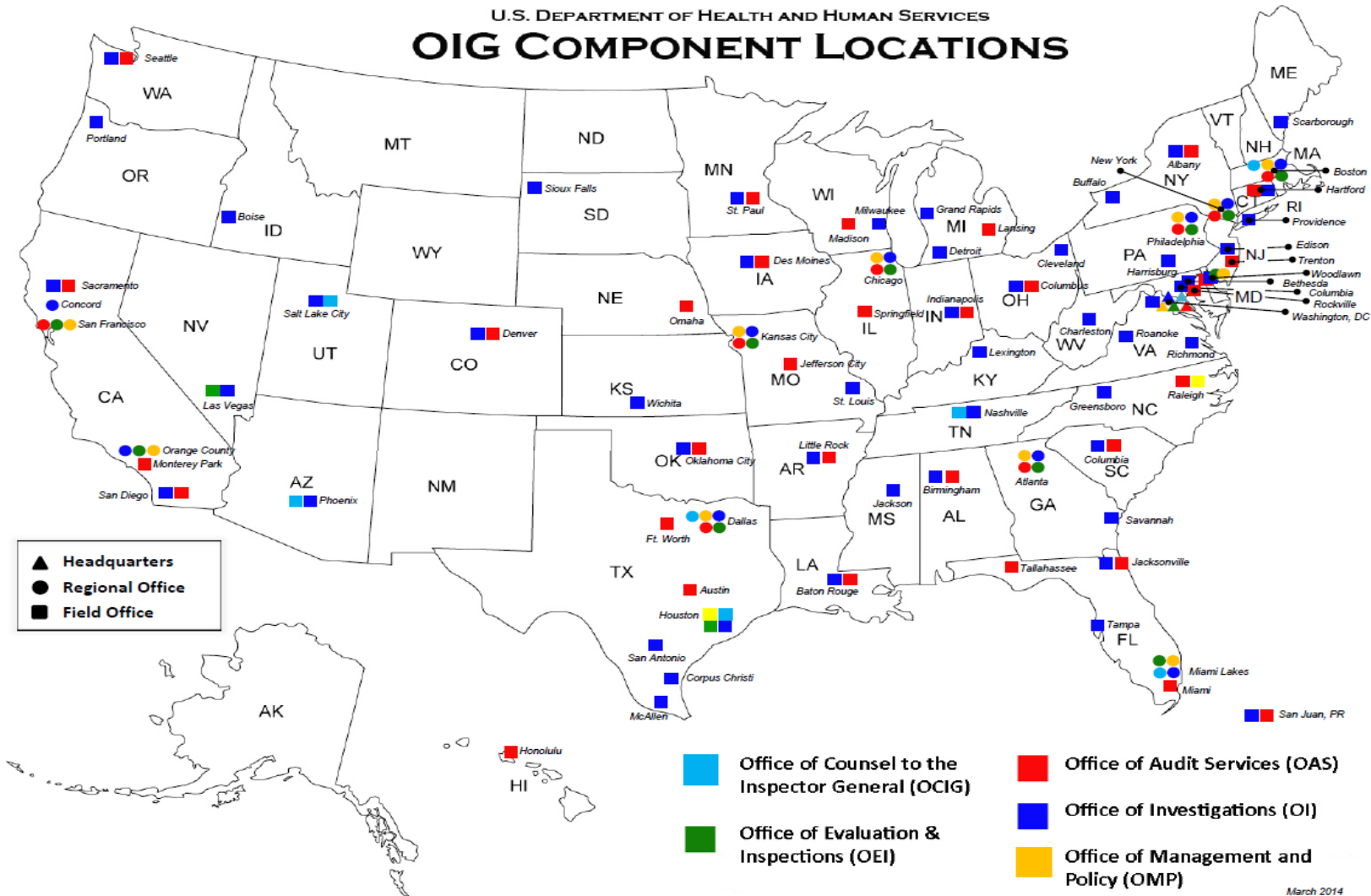
- Indian Health Service
- Head Start
- Child Care Development Fund
- Temporary Assistance for Needy Families



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U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES OIG COMPONENT LOCATIONS





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What We Do



Audit



Evaluate



Investigate



Counsel



Case Example of Tribal TANF Investigation

- Tribal TANF investigation
- Initial complaint of conspiracy and fraud in the program
- HHS-OIG and Tribal LEOs conducted the investigation
- The Tribal TANF Director, four other tribal members, and one non-tribal member indicted and convicted on Federal charges
- Restitution to the Tribe of \$366,612
- ACF Misuse of Funds Penalty \$296,612 due to lack of internal controls



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Managing Grants through Internal Controls





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- What are Internal Controls?
- What are the benefits?
- Examples of poor Internal Controls and how to address them



Internal Controls are everywhere:

You exercise internal control principles in your personal life
Everyday controls you take:

- Lock your house when you leave
- Keep copies of important papers in your safety deposit box
- Balance your checkbook
- Keep your ATM/debit card PIN number separate from your card
- Make travel plans



OMB Requirements

- 2 CFR § 200.303: “The non-Federal entity **must** establish and maintain effective internal controls over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award.”
 - Transactions are properly recorded and accounted for,
 - Transactions are executed in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award, and
 - Funds, property, and other assets are safeguarded against loss from unauthorized use.



Internal Control Standards

How does internal control work?

Internal control helps an entity



Run its
operations
efficiently and
effectively



Report reliable
information
about its
operations



Comply with
applicable
laws and
regulations



Fundamental Concepts





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Why should you have internal controls?



To defend your program!



Benefits of Internal Controls

- Ensures compliance with laws, regulations, and terms of award
- Provides reasonable assurance regarding the achievement of objectives
- Increases financial reliability and integrity
- Helps protect funds against waste and reduce possibility of fraud



Examples of Internal Controls

- Top level performance reviews
- Reviews of individual grants
- Segregation of duties
- Access restrictions
- Supporting documentation
- Reconciliations
- Posting regularly and timely



Lack of Internal Controls

- Unable to meet objectives
- May result in non-compliance with laws, regulations, terms of award
- Unauthorized transactions results in waste of funds
- Poor internal controls creates opportunity for fraud





Control Limitations

- Limitations which may hinder effectiveness of an adequate system internal controls include:
 - resource constraints
 - inadequate skill, knowledge or ability
 - degree of motivation by management and employees
 - faulty judgments
 - unintentional errors



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Think C.A.R.E.S.

- **C**ompliance with applicable laws and regulations.
- **A**ccomplishment of the entity's mission (objectives and goals).
- **R**elevant and reliable financial reporting.
- **E**ffective and efficient operations.
- **S**afeguarding of assets.



Maintain An Effective Accounting System

- Accounting problems = control problems
- Accounting helps you monitor and protect your program's funds.
- Keep source documents
- Goal: all grant dollars support that grant
 - Funds cannot be transferred from one program to another!





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45 CFR Part 75

UNIFORM ADMINISTRATIVE REQUIREMENTS, COST
PRINCIPLES, AND AUDIT REQUIREMENTS FOR HHS AWARDS



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45 CFR § 75.302

- Financial management system that provides:
 - Identification of all Federal awards received and expended
 - Accurate, current and complete disclosure of financial results
 - Records that identify the source and application of funds, supported by source documentation



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45 CFR § 75.302

- Financial management system that provides:
 - Effective control and accountability of all funds, property and assets.
 - Comparison of expenditures with budgeted amounts
 - Written procedures for determining allowability of costs under cost principles



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45 CFR § 75.303

- Establish and maintain effective internal control
- Reasonable assurance grantee complies with:
 - Laws
 - Regulations
 - Terms of Award



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45 CFR § 75.303

- Evaluate and monitor compliance
- Take prompt action when non-compliance has been identified
- Take reasonable measures to safeguard personally identifiable or other sensitive information



TANF Case

The Tribal TANF program issues:

- Lack an internal monitoring process
- No segregation of duties: Way to much control for one employee
- No automated payment system, can manually manipulate payments



LIHEAP: Eligibility Issue

- Eligibility based on incorrect income calculations
- No controls to ensure that household income was properly calculated to determine eligibility
- Establish written procedures for income calculation and documentation requirements



LIHEAP: Documentation Issue

- Grantee unable to support payment to energy suppliers
- No controls to ensure payments supported by adequate documentation
- Written policies and procedures regarding proper documentation and record retention



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Resources

HHS Office of Inspector General at <https://oig.hhs.gov/>

The screenshot shows the homepage of the HHS Office of Inspector General. At the top, there is a dark blue header with the HHS logo, the text "U.S. Department of Health and Human Services Office of Inspector General", a search bar, and a "Submit a Complaint" button. Below the header is a navigation menu with links for "About OIG", "Reports", "Fraud", "Compliance", "Exclusions", "Newsroom", and "Careers". The main content area features a large blue banner with the headline "53 Medical Professionals Charged in Appalachian Region Opioid Takedown" and a "Read About the Takedown" button. Below the banner are three columns of content: "What's New" with two news items from April 19, 2019; "Enforcement Actions" with two items from April 22, 2019; and "Most Shared This Week" with a list of five items.

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Search Submit a Complaint

About OIG Reports Fraud Compliance Exclusions Newsroom Careers

53 Medical Professionals Charged in Appalachian Region Opioid Takedown

Read About the Takedown

What's New

April 19, 2019

- Review of the Department of Health and Human Services' Compliance with the Federal Information Security Modernization Act of 2014 for Fiscal Year 2018

April 18, 2019

- Washington State Made Progress Toward Achieving Program Goals for Enhancing Its Prescription Drug Monitoring Program

Enforcement Actions

April 22, 2019; U.S. Department of Justice

- Michigan Home Health Agency Owner Sentenced to Prison for \$8.3 Million Medicare Fraud

April 22, 2019; U.S. Attorney; Southern District of Florida

- Stuart Physician Sentenced to Prison After Having Been Convicted at Trial of Health Care Fraud

April 18, 2019; U.S. Attorney; District of

Most Shared This Week

- Many Inpatient Rehabilitation Facility Stays Did Not Meet...
- 2019 Appalachian Region Opioid Takedown: Media Materials
- Fraud Alert: Nationwide Brace Scam
- Concerns About Opioid Use in Medicare Part D in the Appalachian...
- 2018 National Healthcare Fraud Takedown



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Office of Audit Services Reports

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Reports & Publications

Work Plan

Top Management & Performance Challenges

Health Care Fraud and Abuse Control Program Report

Strategic Plan

Budget

Semiannual Reports to Congress

Unimplemented Recommendations

Office of Audit Services

Office of Evaluation and Inspections

Office of Audit Services

- [Administration on Aging \(AoA\)](#)
- [Administration for Children and Families \(ACF\)](#)
- [Centers for Disease Control and Prevention \(CDC\)](#)
- [Centers for Medicare and Medicaid Services \(CMS\)](#)
- [Food and Drug Administration \(FDA\)](#)
- [General Departmental](#)
- [Health Resources and Services Administration \(HRSA\)](#)
- [Indian Health Service \(IHS\)](#)
- [National Institutes of Health \(NIH\)](#)
- [Federal/State Joint Audit Initiatives](#)
- [Substance Abuse and Mental Health Services Administration \(SAMHSA\)](#)



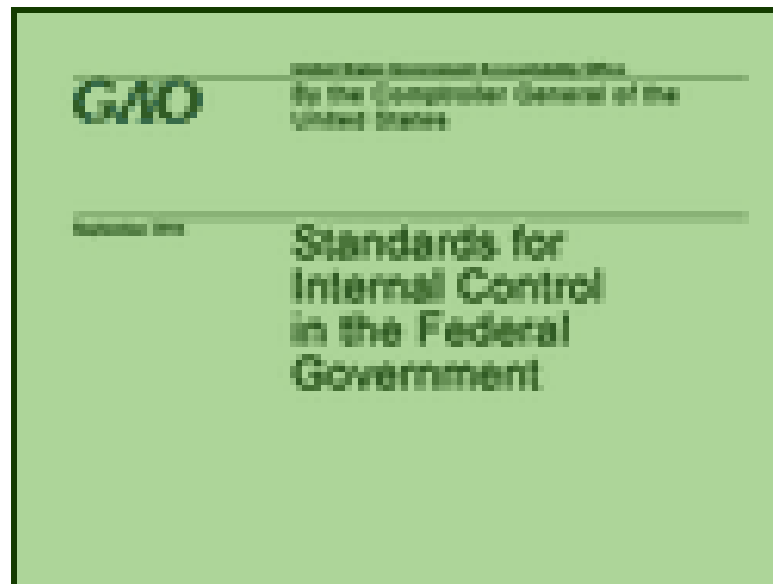
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Resources

Standards for Internal Control in the Federal Government
– by the Comptroller General of the United States dated
September 2014

<https://www.gao.gov/greenbook/overview>





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Resources

Internal Control – Integrated Framework- by the
Committee of Sponsoring Organizations of the
Treadway Commission dated 2013 www.coso.org



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The Purpose of a Compliance Program

(Comply with what?)



Potential Enforcement Actions for Grant Fraud

Criminal

Prosecutions

- Judge/Jury
- Guilt “beyond a reasonable doubt”

Civil

Lawsuits

- Federal False Claims Act
- Judge/Jury
- “Preponderance of Evidence”

Administrative

Administrative Actions

- Civil Monetary Penalty
- Administrative Law Judge
- “Preponderance of Evidence”



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Statutes, Regulations, Administrative Authorities, and Self-Disclosures

1. The False Claims Act
2. Civil Monetary Penalties Law
3. The Inspector General's Exclusion Authority
4. Tribal TANF Laws and Regulations
5. The Self-Disclosure Process



False Claims Act (FCA)

31 U.S.C. Sections 3729-33

Prohibits knowingly making or causing to be made:

- False Claim
- False record or statement
- Reverse false claim (not repaying when discovered)
- Conspiracy

Remedies – Treble Damages and Per Claim Penalties

Common Issues:

- Medical necessity
- Arrangements (under the Anti-Kickback Statute or Stark Law)
- Worthless services
- 60 day repayment
- Data-driven cases
- **Grant Fraud**



OIG Enforcement Authorities

- Civil Monetary Penalties Law (CMPL)
 - Section 1128A of the Social Security Act
 - 42 U.S.C. Section 1320a-7a
- OIG Exclusion Authority
 - Section 1128 of the Social Security Act
 - 42 U.S.C. Section 1320a-7
- 21 Century Cures Act
 - Congress extended CMPL to fraudulent conduct involving HHS grants, contracts, and other agreements.



Civil Monetary Penalties (CMPs)

42 U.S.C. Section 1320a-7a

- False or Fraudulent Claims
- **Grant and Contract Fraud**
- Kickbacks
- Prohibition on Certain Physician Referrals (Stark)
- Billing while excluded
- Patient dumping (EMTALA)
- About 40 other OIG CMPs



Grant-Related CMPL Offenses

42 U.S.C. Sections 1320a-7a(o)(1)-(5)

- Presenting a false or fraudulent specified claim under an HHS grant.
- Making a false statement or omission to HHS about an HHS grant.
- Making or using a false record related to an HHS grant.
- Concealing or improperly avoiding an obligation owed under an HHS grant.
- Failure to grant access to OIG.



What Conduct Could Violate the CMPL?

Misstating facts in grant applications, progress reports, certifications, or other documents submitted to HHS about, for example:

- Qualifications/eligibility;
- Expenses and budget details;
- Facilities;
- Personnel; or
- Project status or results.



What Conduct Could Violate the CMPL?

Submitting false claims can include:

- Charging for costs not incurred or unallowable costs;
- Charging personal expenses against grant;
- Charging more than one grant for same work; or
- In some cases, drawing down funds when not in compliance with grant terms.



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What Conduct Could Violate the CMPL?

Falsifying documents and lying to grant officials:

- Manufacturing time and effort records;
- “Dummy” invoices;
- Lying to agency officials administering grant; or
- Falsifying test results or data.



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What Conduct Could Violate a New CMPL?

Conflicts of Interest, such as:

- Less than arms length transactions;
- Sub-award decisions; or
- Consultants.



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Remedies

- Penalties: between \$10,000 and \$50,000 per act.
- Assessments: recovery of up to 3 times the total amount of funds involved.
- Federal health care program exclusion: no payment may be made by Medicare, Medicaid, or any other Federal health care program.



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The Inspector General's Exclusion Authorities

42 U.S.C. Section 1320a-7



An excluded individual or entity may not get paid, either directly or indirectly, by any Federal health care program, for any items or services they furnish, order, or prescribe.

Another remedy that effects the ability to get paid is suspension/debarment.



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Tribal TANF Laws and Regulations

- Section 412 of the Social Security Act (42 U.S.C. section 612)
- 45 C.F.R. section 286



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Self-Disclosure

- Should I disclose?
- How do I disclose?





Self-Disclosure

Mandatory disclosure:

- 45 C.F.R. § 75.113
- Violations of Federal criminal law that involve fraud, bribery, or gratuity violations.
- Disclose to both:
 - HHS Awarding Agency
 - OIG

Voluntary disclosures:

- Conduct that violates CMPL or impacts award, but does not trigger the requirements of 45 C.F.R. § 75.113.



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Compliance Guidance

Corporate Integrity Agreements

Open Letters

RAT-STATS

Safe Harbor Regulations

Self-Disclosure Information

Special Fraud Alerts, Bulletins, and Other Guidance

Self-Disclosure Information

The Office of Inspector General (OIG) has several self-disclosure processes that can be used to report potential fraud in Department of Health and Human Services (HHS) programs. Choose the one that applies to you from the following descriptions to learn more.

Self-disclosures should not be reported to the OIG Hotline.

Health Care Provider Self-Disclosures

Health care providers, suppliers, or other individuals or entities subject to [Civil Monetary Penalties](#) can use the Provider Self-Disclosure Protocol, which was created in 1998, to voluntarily disclose self-discovered evidence of potential fraud. Self-disclosure gives providers the opportunity to avoid the costs and disruptions associated with a Government-directed investigation and civil or administrative litigation. Visit the [Provider Self-Disclosure Protocol](#) webpage for more information.

HHS Contractor Self-Disclosures

Contractors are individuals, businesses, or other legal entities that are awarded Government contracts, or subcontracts, to provide services to the Department of Health and Human Services (HHS). OIG's contractor self-disclosure program enables contractors to self-disclose potential violations of the False Claims Act and various Federal criminal laws involving fraud, conflict of interest, bribery or gratuity. This self-disclosure process is available for those entities with a Federal Acquisition Regulation-based contract. Visit the [Contractor Self-Disclosure](#) webpage for more information.

HHS Grant Self-Disclosures

HHS grant recipients or subrecipients must disclose evidence of potential violations of Federal criminal law involving fraud, bribery, or gratuity violations, potentially affecting the Federal award. Federal regulation, [45 C.F.R. § 75.113](#), mandates disclosures of criminal offenses that non-Federal entities must make with respect to HHS grants.

Recipients of HHS awards may voluntarily disclose conduct creating liability under the Civil Monetary Penalty Law (CMPL), 42 U.S.C. § 1320a-7a, or any other conduct—such as conduct that might violate civil or administrative laws—that does not clearly fall within the scope of offenses described at 45 C.F.R. § 75.113.

Visit the [HHS OIG Grant Self-Disclosure Program webpage](#) for more information.

*oig.hhs.gov/
compliance/
self-
disclosure-
info/index.a
sp*



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HHS OIG Grant Self Disclosure Program

Mandatory Disclosures

HHS grant recipients or subrecipients must disclose evidence of potential violations of Federal criminal law involving fraud, bribery, or gratuity violations, potentially affecting the Federal award. Federal regulation, [45 C.F.R. § 75.113](#), mandates disclosures of criminal offenses that non-Federal entities must make with respect to HHS grants. Please note that the Office of Inspector General does not track letters certifying that no violations of federal criminal law have occurred, and it is not necessary for grant applicants or recipients to submit such certifications to OIG.

HHS OIG Grant Self-Disclosure Program Guidance

[Grant Self-Disclosure Submission Form](#)

[List of Recently Settled Grantee Self-Disclosures](#)

Voluntary Disclosures

Recipients of HHS awards may voluntarily disclose conduct creating liability under the Civil Monetary Penalty Law (CMPL), 42 U.S.C. § 1320a-7a, or any other conduct—such as conduct that might violate civil or administrative laws—that does not clearly fall within the scope of offenses described at 45 C.F.R. § 75.113.

Self-Disclosure Guidance

Please review the [HHS OIG Grant Self-Disclosure Program Guidance](#) and the [Grant Self-Disclosure Submission Form](#) for more information.

Both mandatory and voluntary self-disclosures may be submitted by email to grantdisclosures@oig.hhs.gov or by mail to the following address:

Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
Grant Self-Disclosures
330 Independence Avenue SW,
Cohen Building, Room 5527
Washington, DC 20201

<https://oig.hhs.gov/compliance/self-disclosure-info/grant.asp>



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OIG's Grants Self-Disclosure Program

HHS OIG
Grant Self-Disclosure Program

June 2019



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- [State False Claims Act Reviews](#)
- [Whistleblower Ombudsman](#)

Grantee Self-Disclosure Settlements

Information on the Grantee Self-Disclosure Protocol can be found on the [Self-Disclosure Information page](#).

2019

06-24-2019

After it self-disclosed conduct to OIG, Total Health Care, Inc. (THC), Maryland, agreed to pay \$151,280.45 for allegedly violating the Civil Monetary Penalties Law. OIG alleged that THC employed an individual that it knew or should have known was excluded from participation in Federal health care programs.

03-01-2019

After it self-disclosed conduct to OIG, Michigan State University (MSU), Michigan, agreed to pay \$47,580 for allegedly violating the Civil Monetary Penalties Law. OIG alleged that MSU used federal funds from a cooperative agreement titled "The Flint Center for Health Equity Solutions" awarded by National Institutes of Health - National Institute on Minority Health and Health Disparities to reimburse a subrecipient who paid the subrecipient's principal investigator for travel. OIG alleged this conduct violated applicable regulations restricting Federal award recipients from entering into covered transactions with debarred individuals, and the terms and conditions of the NIH award to MSU.

2018

12-18-2018

After it self-disclosed conduct to OIG, Save the Children Federation, Inc. (SCF) Mississippi, agreed to pay \$4,146 for

Related Information

- [Background](#)

CMP Navigation

- [Civil Monetary Penalties and Affirmative Exclusions](#)
- [Provider Self-Disclosure Settlements](#)
- [Civil Monetary Penalty Authorities](#)
- [Reportable Event Settlements](#)
- [Grantee Self-Disclosure Settlements](#)

<https://oig.hhs.gov/fraud/enforcement/cmp/grantee.asp>



Benefits of Self-Disclosure

- Favorable treatment compared to affirmative investigation;
- Track record in health care: faster, cheaper, less disruptive;
- OIG coordinates with awarding agencies; and
- Disclosure results in monetary CMPL settlement.



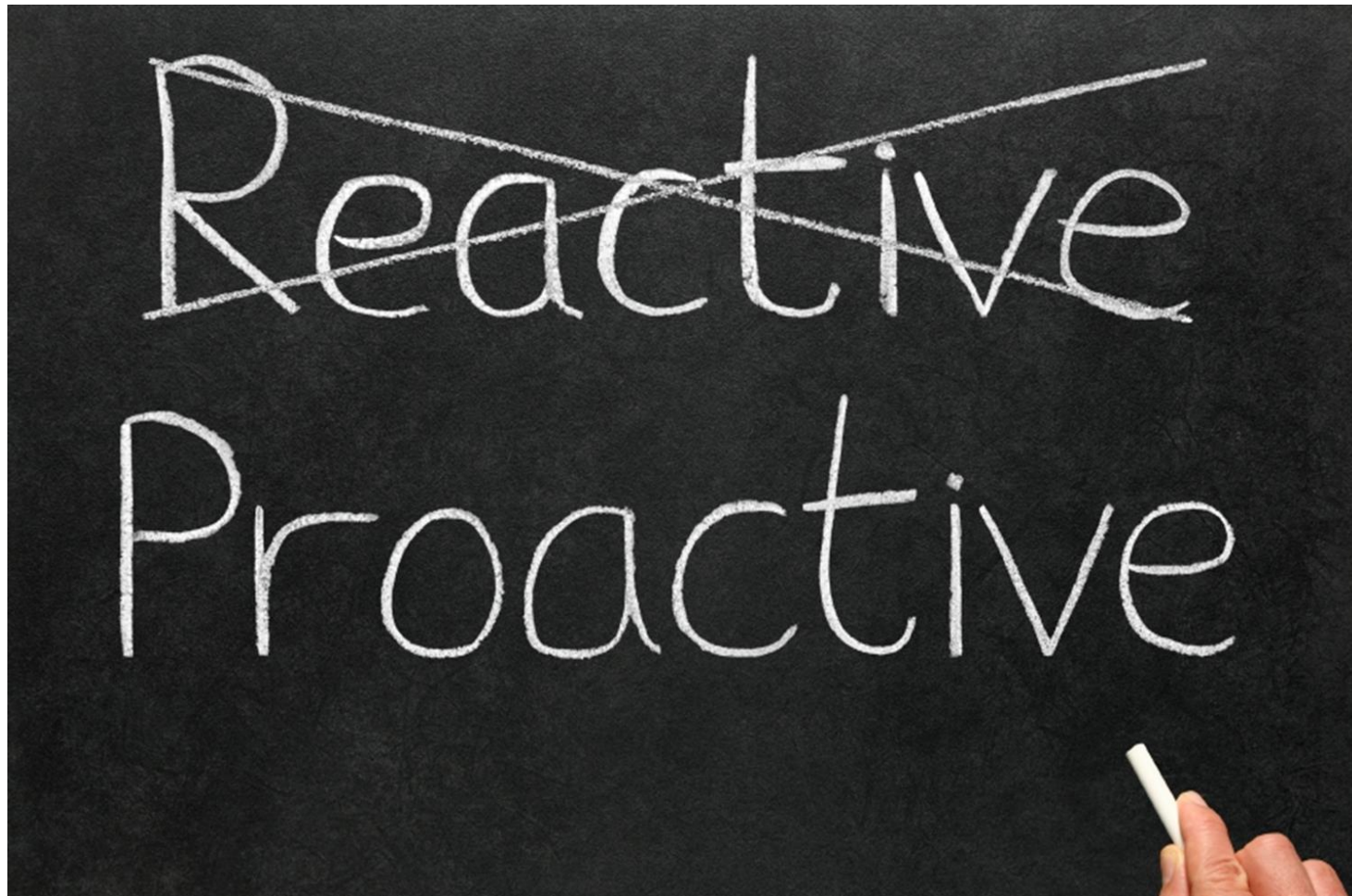
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Key Components of a Compliance Program



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Operating an Effective Compliance Program

oig.hhs.gov/compliance/provider-compliance-training/files/OperatinganEffectiveComplianceProgramFinalBR508.pdf



Operating an Effective Compliance Program

- Policies and Procedures
 - Regularly review and update with department managers and Compliance Committee.
 - Assess whether they are tailored to the intended audience and their job functions.
 - Ensure they are written clearly.
 - Include “real-life” examples.



Seven Fundamental Elements

1. Written policies and procedures
2. Compliance professionals
3. Effective training
4. Effective communication
5. Enforcement of standards
6. Internal monitoring
7. Prompt response





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Tips for Structuring a Compliance Program



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Where Can I Look for Guidance?

OIG.HHS.GOV

Grants Fraud

Other Integrity Agreements

Compliance Resources Portal

Fraud Alerts

Provider Education

Tribal Alert

Voluntary Tribal Compliance
Agreement

Indian Health and Human
Services Web Page



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OIG Free Resources

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OIG.HHS.GOV
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oig.hhs.gov/reports-and-publications/featured-topics/ihs/
oig.hhs.gov/aian
- Opioid Issues
oig.hhs.gov/reports-and-publications/featured-topics/opioids/
- Compliance, Generally
oig.hhs.gov/compliance/compliance-resource-portal/index.asp
- Enforcement Issues
oig.hhs.gov/fraud/enforcement/
- Self Disclosures
oig.hhs.gov/compliance/self-disclosure-info/index.asp
- Grants Information
oig.hhs.gov/fraud/grant/index.asp



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Indian Health and Human Services

oig.hhs.gov/reports-and-publications/featured-topics/ihs/ **OR** oig.hhs.gov/aian



Eye on Oversight Video: Challenges in Indian Health Service Hospitals



Alert



Indian Health and Human Services

This webpage offers an overview of the Office of Inspector General's (OIG) body of work as it relates to the Indian health and human services.

- Overview**
- Reports
- Enforcement
- Resources

The Department of Health and Human Services (HHS) and its many agencies carry out health and human services programs for American Indians and Alaska Natives (AI/ANs) throughout the U.S.

The Indian Health Service (IHS), which has a budget of approximately \$6 billion, provides or funds a wide range of clinical, public health, and community services to approximately 2.2 million AI/ANs who are members of the 567 federally recognized Tribes located in 35 states. IHS and tribally-run facilities generally also serve as Medicare and Medicaid providers for eligible AI/ANs.

Other HHS agencies provide tribal grants for human services programs ranging from Head Start to the Low Income Home Energy Assistance Program.

OIG provides oversight over all HHS federal health care programs and grant programs that serve AI/ANs—through audits, evaluations and investigations.



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Compliance, Generally *[oig.hhs.gov/compliance/ compliance-resource-portal/index.asp](https://oig.hhs.gov/compliance/compliance-resource-portal/index.asp)*

An official website of the United States government [Here's how you know](#)

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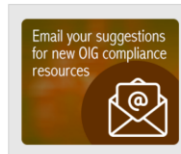
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- [Special Fraud Alerts, Bulletins, and Other Guidance](#)

Compliance Resource Portal

- Toolkits** +
- Provider Compliance Resources and Training** +
- Advisory Opinions** +
- Voluntary Compliance and Exclusions Resources** +
- Special Fraud Alerts, Other Guidance, and Safe Harbor Regulations** +
- Resources for Health Care Boards** +
- Resources for Physicians** +
- Accountable Care Organizations** +



This is not intended to be a formal agency solicitation. OIG welcomes ideas for new compliance resources that would be helpful to the health care community and that are consistent with OIG's mission, in any format. The receipt of a suggestion does not obligate OIG to take action, including responding to the suggestion, making suggestions public, or issuing public guidance. Members of the public are required to follow all Federal health care program rules and regulations.

Disclaimer

These educational materials were current at the time they were

- Compliance
- Compliance Resource Portal
- Accountable Care Organizations
- Advisory Opinions
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- Special Fraud Alerts, Bulletins, and Other Guidance

Compliance Resource Portal

Toolkits +

Provider Compliance Resources and Training -

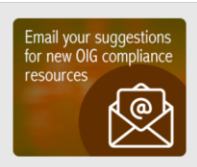
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- [Webcast](#)
- [Presentation Materials](#)
- [Compliance Program Guidance](#)
- [RAT-STATS](#)

Advisory Opinions +

Voluntary Compliance and Exclusions Resources +

Special Fraud Alerts, Other Guidance, and Safe Harbor Regulations +

Resources for Health Care Boards +



This is not intended to be a formal agency solicitation. OIG welcomes ideas for new compliance resources that would be helpful to the health care community and that are consistent with OIG's mission, in any format. The receipt of a suggestion does not obligate OIG to take action, including responding to the suggestion, making suggestions public, or issuing public guidance. Members of the public are required to follow all Federal health care program rules and regulations.



Ten Practical Tips

- 1** Make compliance plans a priority **now**



- 2** Designate (and empower!) an individual or team responsible for compliance





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Ten Practical Tips

3 Know risk areas



4 Manage your sub-awards





Ten Practical Tips

5 Educate your employees



6 Carry a message of compliance from top to bottom





Ten Practical Tips

7 Conduct audits



8 Just because someone else does something **doesn't** mean you *can* or *should*





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Reporting Suspected Fraud

1-800-HHS-TIPS

or

OIG website: <http://oig.hhs.gov/>



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Ten Practical Tips

9 Open lines of communication



10 When in doubt,
ask for help





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Questions?

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